

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 1:18-cr-00367-JPH-MJD
)	
GARRY SMITH, II,)	-02
)	
Defendant.)	

ORDER DIRECTING FURTHER BRIEFING AND LIFTING STAY

Defendant filed a pro se motion that the Court construed as a Motion for Compassionate Release under the First Step Act of 2018. Dkt. 121. The Court appointed counsel to represent Defendant and stayed the case. Dkts. 122, 127. CJA counsel appeared on Defendant's behalf, dkt. 125, but then withdrew, dkts. 138, 139. Because CJA counsel has withdrawn from this case, the **stay issued in this case is hereby lifted**. See dkt. 127.

Defendant must now pursue his Motion for Compassionate Release pro se unless he obtains private counsel. Accordingly, the Court **ORDERS** Defendant to supplement his motion on or before **August 26, 2021**. In his supplement, Defendant must explain: (1) whether he has received the COVID-19 vaccine; (2) if he has not received the COVID-19 vaccine, whether he has been offered the COVID-19 vaccine; and (3) if he refused the COVID-19 vaccine, he must explain why. Given the wide availability of the COVID-19 vaccine in the Bureau of Prisons, Defendant must also explain why the risk he faces from the COVID-19 pandemic still presents an extraordinary and compelling reason warranting compassionate release. See *United States v. Broadfield*, ___ F.4th ___, No. 20-2906, 2021 WL 3076863, at *2 (7th Cir. July 21, 2021) ("[F]or the many prisoners who seek release based on the special risks created by COVID-19 for people living in close quarters, vaccines offer far more relief than a judicial order. A prisoner who can show that he is unable to

receive or benefit from a vaccine may still turn to this statute, but, for the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an 'extraordinary and compelling' reason for immediate release."). Finally, in his supplement, Defendant must provide the Court with any other information or argument that may inform the Court's discretion to grant or deny his Motion for Compassionate Release. In the alternative, Defendant may file a motion to withdraw his Motion for Compassionate Release. **If Defendant does not timely supplement his Motion for Compassionate Release as directed by this Order, the Court will deem it abandoned and deny it without prejudice.**

SO ORDERED.

Date: 7/29/2021



James Patrick Hanlon
United States District Judge
Southern District of Indiana

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